

STATE OF MICHIGAN
COURT OF APPEALS

In re SODERGREN, Minors.

UNPUBLISHED
August 9, 2016

No. 331782
Delta Circuit Court
Family Division
LC No. 15-000102-NA

Before: SERVITTO, P.J., and MARKEY and GLEICHER, JJ.

PER CURIAM.

The circuit court terminated respondent-father’s parental rights to his young sons, AS and PS, based on his failure to address his issues with homelessness, unemployment, substance abuse, and anger management. Respondent accuses the Department of Health and Human Services (DHHS) of “set[ting him] up for failure” by making insufficient efforts to provide services. Although the proceedings did not run smoothly, we discern no ground to overturn the court’s order. We affirm.

I. BACKGROUND

In January 2015, Child Protective Services (CPS) conducted a welfare check of four-year-old PS and two-year-old AS. CPS was familiar with the family and had offered services in the past, but respondent and his girlfriend had refused. CPS investigator Amanda Lloyd found the mother and children at a friend’s apartment. Mother admitted that the family was homeless and had been “bouncing” from place to place. The family had no money or food and no current means to feed the children. Mother also admitted that both she and respondent used marijuana illegally. Lloyd noted bruises on PS’s head and face. When asked, PS asserted, “Daddy hit me,” and demonstrated using a “clenched fist” to hit himself in the face. Mother claimed that respondent was in Minnesota at a job site at that time. Suspicious and aware that respondent had outstanding warrants, Lloyd requested police assistance. Officers found respondent hiding in a crawl space and took him into custody. CPS took the children into care as well.

Respondent quickly established paternity and both parents pleaded to jurisdiction. An initial case service plan was implemented on March 5, 2015. The stated goals of the accompanying parent-agency treatment plan were to “demonstrate the ability to maintain a sober lifestyle,” “obtain emotionally stable behavior,” and “obtain age appropriate parenting skills.” To achieve these goals, the court ordered respondent to secure a psychological evaluation and follow through with recommended treatment and participate in drug screens and substance abuse

counseling. The court also ordered respondent to find employment and housing, and to regularly attend supervised parenting time.

Respondent made little to no progress on achieving his goals throughout the proceedings. Despite amended case service plans with more specific direction, respondent failed to secure substance abuse counseling or attend Narcotics Anonymous meetings. Due to DHHS error, respondent was not offered random drug screens for several months. In September 2015, when the court reordered screens, respondent avowed that he was clean and sober. Tests conducted on that day and throughout the fall and winter, however, tested positive for opiates. Respondent insisted that he was not in violation of his case service plan because no order specifically required him to avoid use of narcotics. The court remedied that omission. However, respondent never demonstrated sobriety. In fact, on the eve of the termination hearing, respondent was arrested in a restaurant parking lot. An officer found respondent holding a filled syringe and respondent admitted that he had intended to inject Ritalin without a prescription.

Respondent failed to follow through with anger management and mental health treatment, although it was recommended following his psychological evaluation. Parenting time sessions did not go well, either. Respondent was repeatedly late or cancelled visits. The children exhibited signs of stress during the sessions and their behavior regressed afterward. The parents often argued in front of the children. During one incident, respondent threatened to cut off AS's fingers if he did not stop sucking on them. Respondent went so far as to retrieve scissors and snip the air in front of him. The child was terrified and subsequently experienced nightmares.

Respondent also never secured stable employment or housing. Respondent was briefly employed at Menard's and claimed to have found work at a concrete company, but never provided proof of employment. In August 2015, the DHHS provided financial assistance for respondent to lease an apartment. He thereafter failed to meet his monthly rent obligations and was evicted. At the time of the termination hearing, respondent and mother were again homeless and were moving between the homes of friends and family members.

Ultimately, the circuit court terminated both respondent's and mother's parental rights based on their lack of progress in remedying their drug addictions, mental health issues, and lack of housing and employment. Respondent now appeals.¹

II. STATUTORY GROUNDS

Respondent challenges the evidence supporting the statutory grounds underlying the termination order. Pursuant to MCL 712A.19b(3), a circuit court "may terminate a parent's parental rights to a child if the court finds, by clear and convincing evidence" that at least one statutory ground has been proven. The petitioner bears the burden of proving that ground. MCR 3.977(A)(3); *In re Trejo*, 462 Mich 341, 350; 612 NW2d 407 (2000). We review a circuit court's factual finding that a statutory termination ground has been established for clear error. *In re Rood*, 483 Mich 73, 90-91; 763 NW2d 587 (2009). "A finding of fact is clearly erroneous if

¹ Mother has not appealed the termination of her parental rights.

the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court's special opportunity to observe the witnesses." *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013) (quotation marks and citation omitted). "Clear error signifies a decision that strikes us as more than just maybe or probably wrong." *In re Williams*, 286 Mich App 253, 271; 779 NW2d 286 (2009).

The circuit court terminated respondent's parental rights under MCL 712A.19b(3)(c)(i), (g), and (j), which provide:

(c) The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

* * *

(g) The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

* * *

(j) There is a reasonable likelihood, based on the conduct or capacity of the child's parent, that the child will be harmed if he or she is returned to the home of the parent.

At the outset, we reject respondent's claim that the DHHS set him up for failure by providing general goals without specific directives. Respondent contends that the DHHS should have ordered him to remain drug-free earlier in the proceedings. He also complains that he needed random drug screens as an incentive to stay clean and the failure to provide such screens for several months set him back. In this regard, respondent relies on *In re B & J*, 279 Mich App 12; 756 NW2d 234 (2008). In that case, the DHHS reported the parents to the United States Immigration and Customs Enforcement agency, leading to their deportation. *Id.* at 15. The DHHS thereafter successfully sought termination on the ground that the parents had been deported and therefore could not provide proper care and custody. *Id.* at 17. This Court held, "Petitioner was not entitled to seek termination of respondents' parental rights under § 19b(3)(g) in this case because petitioner, itself, intentionally set out to create that very ground for termination." *Id.* at 19.

The situation in this case is completely inapposite. *Respondent* created the grounds for termination, not the DHHS. It was respondent's own actions and choices that led to his drug abuse, unemployment, homelessness, and emotional instability. Moreover, it is specious for respondent to claim ignorance of this need to remain drug free. The goal of the initial parent-agency agreement, which respondent signed, was to maintain a sober lifestyle. While the DHHS

dropped the ball on providing drug screens, the court did not count that period against respondent. Rather, respondent's repeated positive screens beginning in the fall of 2015, with his contemporaneous avowals of sobriety, guided the court's termination decision.

We also discern no error in the grounds supporting the termination decision. Termination was supported under factor (c)(i) as more than 182 days had elapsed and respondent had remedied none of the conditions that led to adjudication. Respondent remained unemployed and homeless, despite financial assistance from the DHHS. He had made no efforts to achieve sobriety, and had not even attended Narcotics Anonymous meetings as required by the court. Respondent's complete lack of compliance during the proceedings supported that he would be unable to rectify these conditions within a reasonable time given the children's ages.

Clear and convincing evidence supported termination under factor (g). Respondent's failure to provide proper care and custody for his children led to the court's intervention in the first instance. Respondent and his girlfriend lacked the means to feed their children and yet refused CPS's pre-removal efforts to provide assistance. The court ordered respondent to secure employment and housing so he could provide for his children's needs in the event they were returned to his care. Despite having no childcare concerns, respondent failed to maintain employment. Even with state provision of the start-up costs to rent an apartment, respondent could not meet his monthly obligations. Accordingly, respondent demonstrated no ability to provide proper care and custody for his children, either at the time of the termination hearing or in the near future.

Finally, termination was supportable under factor (j). When CPS removed the children from respondent's custody, PS had bruises on his head and face and reported that respondent had used a fist to hit him. Respondent's psychological evaluation revealed that anger management was an issue for him. Yet, respondent failed to follow through with a referral for mental health services. Respondent never attended counseling of any kind. And respondent's anger management issues did not resolve on their own. Parenting time supervisors described that respondent and the children's mother frequently argued in front of the children. Of greatest concern, respondent used inappropriate threats to discipline the children, including threatening to cut off AS's fingers with a pair of scissors, causing emotional trauma. Accordingly, we discern no error in the court's conclusion that three statutory grounds supported termination in this case.

III. BEST INTERESTS

Respondent further contends that the circuit court erroneously determined that termination of his parental rights was in the children's best interests. "Once a statutory ground for termination has been proven, the trial court must find that termination is in the child's best interests before it can terminate parental rights." *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012), citing MCL 712A.19b(5). "[W]hether termination of parental rights is in the best interests of the child must be proven by a preponderance of the evidence." *Moss*, 301 Mich App at 90. The lower court should weigh all the evidence available to it in determining the child's best interests. *Trejo*, 462 Mich at 356-357. Relevant factors in this consideration include "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *Olive/Metts*, 297 Mich App at 41-42 (citations omitted).

Respondent aptly cites record evidence that he shared a bond with his children. However, ample evidence supported that termination was in the children's best interests. There was record evidence of physical abuse and inappropriate discipline. Yet, respondent made no efforts to participate in counseling and anger management. As a result, visits remained "chaotic" and respondent continued to employ inappropriate parenting methods. Moreover, the children exhibited signs of stress during the visits and acted out afterward, evidencing that a continued relationship would be ill advised. Respondent continued to abuse opiates throughout the proceedings and took no steps toward recovery. He made feeble efforts at securing and maintaining employment so he could provide for his children. Overall, the evidence strongly preponderated in favor of termination.

We affirm.

/s/ Deborah A. Servitto
/s/ Jane E. Markey
/s/ Elizabeth L. Gleicher